

118TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to expand the employer-provided child care credit and the dependent care assistance exclusion.

IN THE SENATE OF THE UNITED STATES

Mr. KAINE (for himself and Mrs. BRITT) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to expand the employer-provided child care credit and the dependent care assistance exclusion.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Care Availability
5 and Affordability Act”.

6 **SEC. 2. EXPANSION OF EMPLOYER-PROVIDED CHILD CARE**
7 **CREDIT.**

8 (a) INCREASE OF AMOUNT OF QUALIFIED CHILD
9 CARE EXPENDITURES TAKEN INTO ACCOUNT.—Section

1 45F(a)(1) of the Internal Revenue Code of 1986 is amend-
2 ed by striking “25 percent” and inserting “50 percent”.

3 (b) INCREASE OF MAXIMUM CREDIT AMOUNT.—Sec-
4 tion 45F(b) of the Internal Revenue Code of 1986 is
5 amended by striking “\$150,000” and inserting
6 “\$500,000”.

7 (c) TREATMENT OF JOINTLY OWNED OR OPERATED
8 CHILDCARE FACILITY.—Section 45F(c)(1) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new subparagraph:

11 “(C) JOINTLY OWNED OR OPERATED
12 CHILDCARE FACILITY.—For purposes of sub-
13 paragraph (A)(i)(I), a facility shall not fail to
14 be treated as a qualified childcare facility of the
15 taxpayer merely because such facility is jointly
16 owned or operated by the taxpayer and other
17 persons.”.

18 (d) SPECIAL RULE FOR SMALL BUSINESSES.—Sec-
19 tion 45F(e) of the Internal Revenue Code of 1986 is
20 amended by adding at the end the following new para-
21 graph:

22 “(4) SMALL BUSINESSES.—

23 “(A) IN GENERAL.—In the case of a tax-
24 payer described in subparagraph (B)—

1 “(i) subsection (a)(1) shall be applied
2 by substituting ‘60 percent’ for ‘50 per-
3 cent’, and

4 “(ii) subsection (b) shall be applied by
5 substituting ‘\$600,000’ for ‘\$500,000’.

6 “(B) TAXPAYER DESCRIBED.—A taxpayer
7 described in this subparagraph is a taxpayer
8 that meets the gross receipts test of section
9 448(c), determined—

10 “(i) by substituting ‘5-taxable-year’
11 for ‘3-taxable-year’ in paragraph (1) there-
12 of, and

13 “(ii) by substituting ‘5-year’ for ‘3-
14 year’ each place such term appears in
15 paragraph (3)(A) thereof.”.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts paid or incurred after
18 the date of the enactment of this section.

19 **SEC. 3. INCREASE IN AMOUNT EXCLUDABLE FOR DEPEND-**
20 **ENT CARE ASSISTANCE PROGRAMS.**

21 (a) IN GENERAL.—Section 129(a)(2)(A) of the Inter-
22 nal Revenue Code of 1986 is amended by striking “\$5,000
23 (\$2,500” and inserting “\$7,500 (\$3,750”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to amounts paid or incurred after
3 the date of the enactment of this section.

4 **SEC. 4. HOUSEHOLD AND DEPENDENT CARE CREDIT IN-**
5 **CREASED AND MADE REFUNDABLE.**

6 (a) IN GENERAL.—Subpart C of part IV of sub-
7 chapter A of chapter 1 of the Internal Revenue Code of
8 1986 is amending by inserting after section 36B the fol-
9 lowing new section:

10 **“SEC. 36C. EXPENSES FOR HOUSEHOLD AND DEPENDENT**
11 **CARE SERVICES NECESSARY FOR GAINFUL**
12 **EMPLOYMENT.**

13 “(a) ALLOWANCE OF CREDIT.—

14 “(1) IN GENERAL.—In the case of an individual
15 for which there are 1 or more qualifying individuals
16 with respect to such individual, there shall be al-
17 lowed as a credit against the tax imposed by this
18 chapter for the taxable year an amount equal to the
19 applicable percentage of the employment-related ex-
20 penses paid by such individual during the taxable
21 year.

22 “(2) APPLICABLE PERCENTAGE DEFINED.—For
23 purposes of paragraph (1), the term ‘applicable per-
24 centage’ means 50 percent—

1 “(A) reduced (but not below 35 percent)
2 by 1 percentage point for each \$2,000 (or frac-
3 tion thereof) by which the taxpayer’s adjusted
4 gross income for the taxable year exceeds
5 \$15,000, and

6 “(B) further reduced (but not below zero)
7 by 1 percentage point for each \$2,000 (or frac-
8 tion thereof) by which the taxpayer’s adjusted
9 gross income for the taxable year exceeds
10 \$350,000.

11 “(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND
12 EMPLOYMENT-RELATED EXPENSES.—For purposes of
13 this section—

14 “(1) QUALIFYING INDIVIDUAL.—The term
15 ‘qualifying individual’ means—

16 “(A) a dependent of the taxpayer (as de-
17 fined in section 152(a)(1)) who has not attained
18 age 13,

19 “(B) a dependent of the taxpayer (as de-
20 fined in section 152, determined without regard
21 to subsections (b)(1), (b)(2), and (d)(1)(B))
22 who is physically or mentally incapable of car-
23 ing for himself or herself and who has the same
24 principal place of abode as the taxpayer for
25 more than one-half of such taxable year, or

1 “(C) the spouse of the taxpayer, if the
2 spouse is physically or mentally incapable of
3 caring for himself or herself and who has the
4 same principal place of abode as the taxpayer
5 for more than one-half of such taxable year.

6 “(2) EMPLOYMENT-RELATED EXPENSES.—

7 “(A) IN GENERAL.—The term ‘employ-
8 ment-related expenses’ means amounts paid for
9 the following expenses, but only if such ex-
10 penses are incurred to enable the taxpayer to be
11 gainfully employed for any period for which
12 there are 1 or more qualifying individuals with
13 respect to the taxpayer:

14 “(i) Expenses for household services.

15 “(ii) Expenses for the care of a quali-
16 fying individual.

17 Such term shall not include any amount paid
18 for services outside the taxpayer’s household at
19 a camp where the qualifying individual stays
20 overnight.

21 “(B) EXCEPTION.—Employment-related
22 expenses described in subparagraph (A) which
23 are incurred for services outside the taxpayer’s
24 household shall be taken into account only if in-
25 curred for the care of—

1 “(i) a qualifying individual described
2 in paragraph (1)(A), or

3 “(ii) a qualifying individual (not de-
4 scribed in paragraph (1)(A)) who regularly
5 spends at least 8 hours each day in the
6 taxpayer’s household.

7 “(C) DEPENDENT CARE CENTERS.—Em-
8 ployment-related expenses described in subpara-
9 graph (A) which are incurred for services pro-
10 vided outside the taxpayer’s household by a de-
11 pendent care center (as defined in subpara-
12 graph (D)) shall be taken into account only if—

13 “(i) such center complies with all ap-
14 plicable laws and regulations of a State or
15 unit of local government, and

16 “(ii) the requirements of subpara-
17 graph (B) are met.

18 “(D) DEPENDENT CARE CENTER DE-
19 FINED.—For purposes of this paragraph, the
20 term ‘dependent care center’ means any facility
21 which—

22 “(i) provides care for more than 6 in-
23 dividuals (other than individuals who re-
24 side at the facility), and

1 “(ii) receives a fee, payment, or grant
2 for providing services for any of the indi-
3 viduals (regardless of whether such facility
4 is operated for profit).

5 “(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The
6 amount of the employment-related expenses incurred dur-
7 ing any taxable year which may be taken into account
8 under subsection (a) shall not exceed—

9 “(1) \$5,000 if there is 1 qualifying individual
10 with respect to the taxpayer for such taxable year,
11 or

12 “(2) \$8,000 if there are 2 or more qualifying
13 individuals with respect to the taxpayer for such tax-
14 able year.

15 “(d) EARNED INCOME LIMITATION.—

16 “(1) IN GENERAL.—Except as otherwise pro-
17 vided in this subsection, the amount of the employ-
18 ment-related expenses incurred during any taxable
19 year which may be taken into account under sub-
20 section (a) shall not exceed—

21 “(A) in the case of an individual who is
22 not married at the close of such year, such indi-
23 vidual’s earned income for such year, or

24 “(B) in the case of an individual who is
25 married at the close of such year, the lesser of

1 such individual's earned income or the earned
2 income of his spouse for such year.

3 “(2) SPECIAL RULE FOR SPOUSE WHO IS A
4 STUDENT OR INCAPABLE OF CARING FOR SELF.—In
5 the case of a spouse who is a student or a qualifying
6 individual described in subsection (b)(1)(C), for pur-
7 poses of paragraph (1), such spouse shall be deemed
8 for each month during which such spouse is a full-
9 time student at an educational institution, or is such
10 a qualifying individual, to be gainfully employed and
11 to have earned income of not less than—

12 “(A) \$250 if subsection (c)(1) applies for
13 the taxable year, or

14 “(B) \$500 if subsection (c)(2) applies for
15 the taxable year.

16 “(e) SPECIAL RULES.—For purposes of this sec-
17 tion—

18 “(1) PLACE OF ABODE.—An individual shall
19 not be treated as having the same principal place of
20 abode of the taxpayer if at any time during the tax-
21 able year of the taxpayer the relationship between
22 the individual and the taxpayer is in violation of
23 local law.

24 “(2) MARRIED COUPLES MUST FILE JOINT RE-
25 TURN.—If the taxpayer is married at the close of

1 the taxable year, the credit shall be allowed under
2 subsection (a) only if the taxpayer and the tax-
3 payer's spouse file a joint return for the taxable
4 year.

5 “(3) MARITAL STATUS.—An individual legally
6 separated from the individual's spouse under a de-
7 cree of divorce or of separate maintenance shall not
8 be considered as married.

9 “(4) CERTAIN MARRIED INDIVIDUALS LIVING
10 APART.—If—

11 “(A) an individual who is married and who
12 files a separate return—

13 “(i) maintains as the individual's
14 home a household which constitutes for
15 more than $\frac{1}{2}$ of the taxable year the prin-
16 cipal place of abode of a qualifying indi-
17 vidual, and

18 “(ii) furnishes over half of the cost of
19 maintaining such household during the
20 taxable year, and

21 “(B) during the last 6 months of such tax-
22 able year such individual's spouse is not a mem-
23 ber of such household,
24 such individual shall not be considered as married.

1 “(5) SPECIAL DEPENDENCY TEST IN CASE OF
2 DIVORCED PARENTS, ETC.—If—

3 “(A) section 152(e) applies to any child
4 with respect to any calendar year, and

5 “(B) such child is under the age of 13 or
6 is physically or mentally incapable of caring for
7 himself or herself,

8 in the case of any taxable year beginning in such
9 calendar year, such child shall be treated as a quali-
10 fying individual described in subparagraph (A) or
11 (B) of subsection (b)(1) (whichever is appropriate)
12 with respect to the custodial parent (as defined in
13 section 152(e)(4)(A)), and shall not be treated as a
14 qualifying individual with respect to the noncustodial
15 parent.

16 “(6) PAYMENTS TO RELATED INDIVIDUALS.—
17 No credit shall be allowed under subsection (a) for
18 any amount paid by the taxpayer to an individual—

19 “(A) with respect to whom, for the taxable
20 year, a deduction under section 151(c) (relating
21 to deduction for personal exemptions for de-
22 pendents) is allowable either to the taxpayer or
23 the taxpayer’s spouse, or

24 “(B) who is a child of the taxpayer (within
25 the meaning of section 152(f)(1)) who has not

1 attained the age of 19 at the close of the tax-
2 able year.

3 For purposes of this paragraph, the term ‘taxable
4 year’ means the taxable year of the taxpayer in
5 which the service is performed.

6 “(7) STUDENT.—The term ‘student’ means an
7 individual who during each of 5 calendar months
8 during the taxable year is a full-time student at an
9 educational organization.

10 “(8) EDUCATIONAL ORGANIZATION.—The term
11 ‘educational organization’ means an educational or-
12 ganization described in section 170(b)(1)(A)(ii).

13 “(9) IDENTIFYING INFORMATION REQUIRED
14 WITH RESPECT TO SERVICE PROVIDER.—No credit
15 shall be allowed under subsection (a) for any amount
16 paid to any person unless—

17 “(A) the name, address, and taxpayer
18 identification number of such person are in-
19 cluded on the return claiming the credit, or

20 “(B) if such person is an organization de-
21 scribed in section 501(c)(3) and exempt from
22 tax under section 501(a), the name and address
23 of such person are included on the return
24 claiming the credit.

1 In the case of a failure to provide the information
2 required under the preceding sentence, the preceding
3 sentence shall not apply if it is shown that the tax-
4 payer exercised due diligence in attempting to pro-
5 vide the information so required.

6 “(10) IDENTIFYING INFORMATION REQUIRED
7 WITH RESPECT TO QUALIFYING INDIVIDUALS.—No
8 credit shall be allowed under this section with re-
9 spect to any qualifying individual unless the TIN of
10 such individual is included on the return claiming
11 the credit.

12 “(f) REGULATIONS.—The Secretary shall issue such
13 regulations or other guidance as may be necessary or ap-
14 propriate to carry out the purposes of this section.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 1324(b) of title 31 is amended by
17 inserting “36C,” after “36B,”.

18 (2) Section 21 of the Internal Revenue Code of
19 1986 is repealed.

20 (3) The table of sections for subpart A of part
21 IV of subchapter A of chapter 1 of such Code is
22 amended by striking the item relating to section 21.

23 (4) Section 6211(b)(4)(A) of such Code is
24 amended by striking “21 by reason of subsection (g)
25 thereof,”.

1 (5) Section 6213(g)(2) of such Code is amend-
2 ed—

3 (A) in subparagraph (H), by striking “sec-
4 tion 21” and inserting “section 36C”, and

5 (B) in subparagraph (L)—

6 (i) by striking “21,” and

7 (ii) by inserting “36C,” after “32,”.

8 (6) The following sections of such Code are
9 each amended by striking “section 21(e)” and in-
10 sserting “section 36C(e)”.

11 (A) Section 23(f)(1).

12 (B) Section 35(g)(6).

13 (C) Section 129(a)(2)(C).

14 (7) Section 129 of such Code is further amend-
15 ed—

16 (A) in subsection (b)(2), by striking “sec-
17 tion 21(d)(2)” and inserting “section
18 36C(d)(2)”, and

19 (B) in subsection (e)(1), by striking “sec-
20 tion 21(b)(2)” and inserting “section
21 36C(b)(2)”.

22 (8) Section 213(e) of such Code is amended by
23 striking “section 21” and inserting “section 36C”.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for subpart C of part IV of subchapter A of chapter 1

1 of such Code is amended by inserting after the item relat-
2 ing to section 36B the following new item:

“Sec. 36C. Expenses for household and dependent care services necessary for
gainful employment.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning after
5 the date of the enactment of this section.